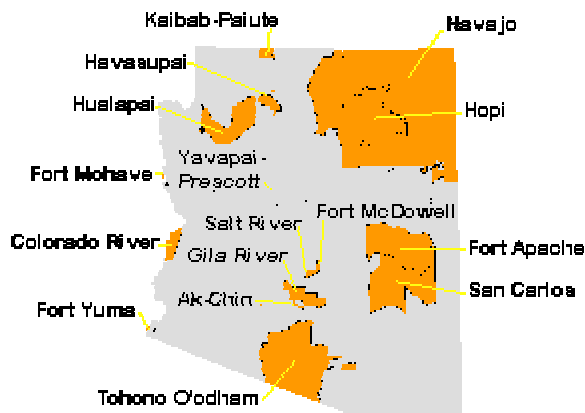


INDIAN WATER RIGHTS SUMMARY

Determining Indian water rights is among the most important water resource issues in Arizona today. The fact that Indian water rights claims are usually very senior and, in many cases, unquantified demonstrates the importance of the issue. There are currently two means by which Indian water rights claims are resolved in Arizona: negotiation of water rights settlements and the adjudication of water rights.

INDIAN WATER RIGHTS

The United States Supreme Court in 1908 determined in *United States v. Winters* that federal reservations were allocated enough water at the time the reservation was established to meet the purpose of the reservation. Within Arizona's surface water law doctrine of prior appropriation, this means that the priority date of the water right is the date the reservation was established. Generally in Arizona, this time precedes extensive non-Indian settlement so Indian water rights are senior to rights held by non-Indian users.



Until recent years, there had been little effort to determine the quantity of water reserved. As a result, Indian water rights still remain largely unused and unquantified. Because these rights are not quantified, non-Indian water users with junior water rights face considerable uncertainty when planning their long-term water use. Settling or adjudicating Indian water rights will help both Indian and non-Indian water users to plan future water resources development.

ADJUDICATION OF WATER RIGHTS

Two general stream adjudications of water rights are now in progress in Arizona. In the adjudication of the Gila River system, eleven Indian tribes have filed claims. In the Little

Colorado River system adjudication the Hopi, Navajo, San Juan Paiute, and Zuni nations are involved. In the absence of comprehensive settlements, the adjudications will eventually resolve the Indian claims and the claims of all other water users in these watersheds. However, each adjudication is a massive, time-consuming undertaking. The Gila River adjudication may be one of the largest lawsuits ever filed in the United States, affecting more than 28,000 parties.

CONCLUSION

With almost 28% of Arizona's land area held in trust for Native Americans, the Indian communities demand for water will have a dramatic impact on water management in Arizona. The Department of Water Resources and water users throughout the state will continue to work with the tribal governments to resolve their concerns. To date several settlements of water rights claims have been reached (summarized in a separate Information Sheet) and negotiations regarding other settlements are underway.

INDIAN WATER RIGHTS CLAIMS: SETTLEMENT UPDATE

In Arizona, as in most states, negotiation of Indian water rights claims has been litigation driven. Indian water right claims are based on "reserved water rights" for federal reservations established under the "Winters Doctrine." When the federal government established the Indian reservations it did not expressly claim associated water rights. In 1908, the U.S. Supreme Court in *Winters v. United States*, found that a federal reservation includes an amount of water necessary to fulfill the reservation's purpose. Priority dates are based on the date of the enactment of the treaty, act of Congress, or Executive Order establishing the reservation. In 1963, the Supreme Court further defined reserved water rights for Indian reservations by including the standard of practicably irrigable acreage as a method of quantifying the right.

Litigation to quantify Indian water rights claims is usually a lengthy and expensive process. Settlement of the tribal claims benefits private and public parties by providing the water certainty necessary to plan long-term economic development. Also, settlement may be less expensive than litigation. However, the greatest benefit of settlements may be the goodwill created by neighboring communities working together for Arizona's future.

When the settlement process begins, parties potentially impacted by the Indian water rights claims identify the sources of water necessary to satisfy the tribal needs. A federal negotiating team works with the parties to assure that federal requirements, including local cost contribution, are met. The Arizona Department of Water Resources (ADWR) participates in the settlement discussion, offering technical assistance and ensuring state water laws and policies are followed. In addition to ADWR's efforts, the state has created the Office of Indian Water Rights Settlement Facilitation. The parties may utilize the facilitator for information, facilitation and mediation purposes. When local parties agree on a settlement, the issue is taken to the United States Congress for approval and funding. Generally, the congressional act ratifies the agreement among the parties, authorizes congressional appropriations, and may require a state contribution. The parties then finalize the implementing agreement, seek any necessary state appropriation, and seek approval of the court in either the Gila River General Stream Adjudication or the Little Colorado General Stream Adjudication.

AK CHIN INDIAN COMMUNITY

By Congressional action in 1978 and 1984, the Ak Chin Indian Community was awarded an annual entitlement to 75,000 acre-feet (85,000 acre-feet in wet years) of water delivered via the Central Arizona Project (CAP) and other Colorado River water. Delivery of this water has commenced. In 1992, Congress amended the 1984 Act to authorize the Community to lease any unused CAP water to off-reservation users within the Tucson, Pinal and Phoenix Active Management Areas.

TOHONO O'ODHAM NATION

In 1982, the Southern Arizona Water Rights Settlement Act (SAWRSA) was enacted by Congress to address the water claims of the San Xavier and Shuck Toak Districts of the Tohono O'odham Nation. SAWRSA awarded the districts an annual entitlement to 37,800 acre-feet of CAP and 28,200 acre-feet of settlement water to be delivered by the Secretary of the Interior to the two districts. The districts may also pump a limited amount of groundwater. In addition to state and local financial contributions the City of Tucson contributed 28,200 acre-feet annually of effluent to be used by the Secretary to facilitate deliveries to the districts (through sale or exchange). The districts may lease the CAP and settlement water within an area slightly larger than the Tucson Active Management Area.

The settlement has not yet been implemented. Court claims have not been dismissed against the non-Indian parties; little water has been delivered to the districts. SAWRSA has been amended to extend the Secretary's delivery deadline and to retain the locally funded Cooperative Fund for the Nation (the state contributed \$2.75 million). Further amendments will be sought to facilitate implementation so that full utilization of CAP can occur.

The Tohono O'odham Nation's claims to water will not be completely satisfied until the water rights claims of the Sif Oidak District in Pinal County, commonly known as Chui Chu, are addressed. While that district currently has a

contract for 8,000 acre-feet of CAP water, it has stated a need of nearly 100,000 acre-feet. The Nation has requested that a federal negotiating team be established so that negotiations can be commenced.

SALT RIVER-PIMA MARICOPA INDIAN COMMUNITY

In the Salt River-Pima Maricopa Indian Community Water Rights Settlement Act of 1988, Congress approved an agreement which gave the Community an annual entitlement to 122,400 acre-feet of water plus storage rights behind Bartlett and modified Roosevelt Dams. The parties to the agreement were: Salt River Project, Roosevelt Water Conservation District, Roosevelt Irrigation District, Chandler, Glendale, Mesa, Phoenix, Scottsdale, Tempe, Gilbert, the Central Arizona Water Conservation District, the United States and the State of Arizona.

The sources of water for the Community under the settlement are from the Salt River, Verde River, groundwater and CAP water. The Community is allowed to pump groundwater, but must achieve safe-yield when the East Salt River sub-basin in the Phoenix Active Management Area does so. The Community has leased its 13,000 acre-feet CAP allocation to the Phoenix valley cities from 2000 to 2099. The Arizona State Legislature appropriated \$3 million, which was added to \$47 million from the United States for the Community's trust fund. This settlement was approved by the court in the Gila River General Stream Adjudication for incorporation into the final decree in that case.

FORT MCDOWELL INDIAN COMMUNITY

In 1990, Congress ratified an agreement between the Fort McDowell Indian Community (FMIC) and neighboring non-Indian communities, including Salt River Project, Roosevelt Water Conservation District, Chandler, Mesa, Phoenix, Scottsdale, Tempe, Gilbert, the Central Arizona Water Conservation District, the United States and the State of Arizona. Under that agreement, FMIC is provided an annual entitlement to 35,950 acre-feet of water from the Verde River and CAP. The 18,233 acre-feet of CAP in the water budget may be leased for 100 years or less off-reservation within Pima, Pinal, and Maricopa counties. A lease of 4,300 acre-feet to Phoenix has already been signed. This settlement also provides for a minimum stream flow on the Lower Verde River of 100 cfs.

In accordance with the 1990 Act, a development fund was created with \$23 million from the United States and with a \$2 million appropriation by the Arizona State Legislature. The settlement was approved by the court in the Gila River General Stream Adjudication and will be incorporated into a final decree in that case.

SAN CARLOS APACHE TRIBE

The water rights claims of the San Carlos Apache Tribe to the Salt River side of their reservation were settled through congressional enactment of the San Carlos Apache Tribe Settlement Act of 1992. The Tribe was awarded an annual entitlement to 71,435 acre-feet of water from the following sources: Salt River, Gila River, Black River and CAP. The 64,135 acre-feet of CAP water may be leased off-reservation within Pima, Maricopa, Pinal, Yavapai, Graham, and Greenlee counties. Groundwater may also be pumped from under the reservation.

The settlement agreement has been approved by the court in the Gila River General Stream Adjudication for incorporation into the final decree in that case. Signatory parties include: Salt River Project, Roosevelt Water Conservation District, Phelps Dodge Corporation, the Buckeye Irrigation Company, the Buckeye Water Conservation and Drainage District, Chandler, Glendale, Globe, Mesa, Safford, Scottsdale, Tempe, Gilbert, Carefree, the Central Arizona Water Conservation District, the United States and the State of Arizona. This agreement includes a 100-year lease with the City of Scottsdale for a portion of the Tribe's CAP water.

In 1994, the Arizona State Legislature appropriated \$3 million, which was added to \$38.4 million from the United States, for the Tribe's development trust fund. The water right claims of the San Carlos Apache Tribe to the Gila River side of the reservation will be the subject of separate discussions or litigation.

YAVAPAI-PRESCOTT INDIAN TRIBE

In 1994, Congress enacted the Yavapai-Prescott Indian Tribe Water Settlement Act. The Act settles the Tribe's water rights claims by: 1) confirming the Tribe's right to pump groundwater within the boundaries of the reservation, 2) providing for the relinquishment of the Tribe's CAP contract, the proceeds to be used for a water service contract with the City of Prescott, and 3) providing that the Tribe may divert a portion of the water from Granite Creek currently diverted by the Chino Valley Irrigation District.

The Act also provides authorization to the Tribe and the City of Prescott to market their CAP water to the City of Scottsdale, which has been completed. The Act required a state appropriation of \$200,000 which was made in the 1994 session of the Arizona State Legislature and was added to the Tribe's CAP proceeds fund. The Gila River General Stream Adjudication approved this settlement for incorporation into the final decree in that case.

GILA RIVER INDIAN COMMUNITY

The Gila River Indian Community (GRIC) claims an annual entitlement to over 1.5 million acre-feet in the Gila River General Stream Adjudication. A federal negotiating team was established to facilitate settlement discussions. Since that time a settlement water budget of an annual entitlement to 653,500 acre-feet has been the basis for the negotiations. A variety of water sources are being discussed including CAP water, the Gila River and groundwater. The potential parties to the settlement discussion include many non-Indian neighbors: Salt River Project, Roosevelt Water Conservation District, San Carlos Irrigation and Drainage District, Hohokam Irrigation District, New Magma Irrigation District, Phoenix valley cities, Central Arizona Irrigation and Drainage District, Maricopa-Stanfield Irrigation District, the United States, Central Arizona Water Conservation District and the State of Arizona. Discussions have taken place between GRIC and individual parties, but a full settlement may be dependent upon the quantity of CAP water available for Indian settlements and the costs associated with CAP water. When settlement is reached Congressional and state approval will be sought. In 1997 the ADWR published a preliminary Hydrographic Survey Report on water uses and lands of the Gila River Indian Reservation. This report further defines the issues to any potential settlement or litigation.

UPPER GILA VALLEY

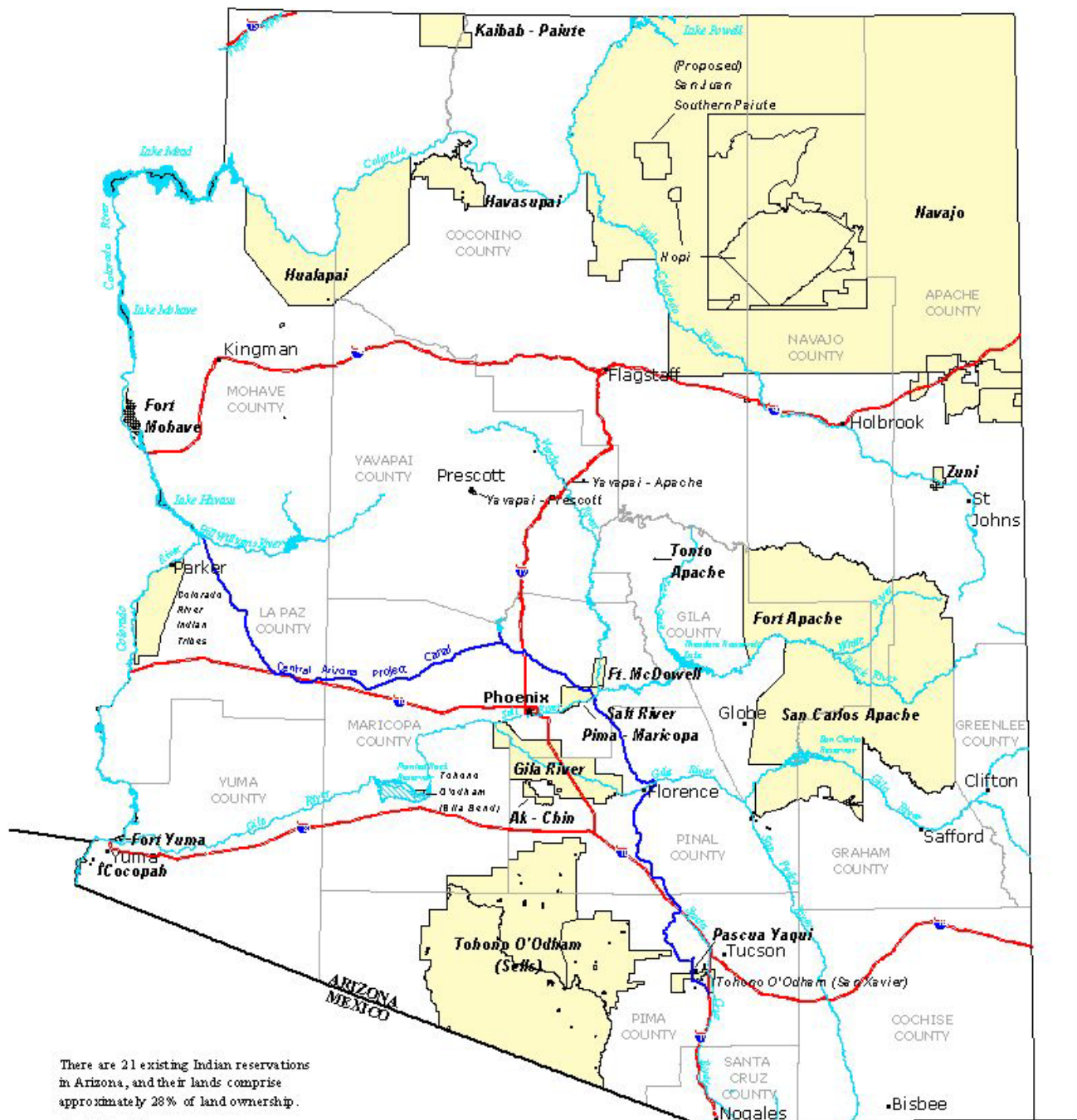
The Indian and non-Indian water users who are parties in the United States v. Gila Valley Irrigation District, et al., Globe Equity No. 59 (entered June 29, 1935), also known as the Globe Equity Consent Decree, have been in continuing litigation over the management of the Decree.

The major parties to the consent decree include: San Carlos Apache Tribe, Gila River Indian Community, the United States on behalf of the tribes, Upper Valley Defendants (irrigators in the Gila Valley and Franklin Irrigation Districts), San Carlos Irrigation and Drainage District, Asarco Mining Company, and Phelps-Dodge Corporation. Major issues in the ongoing enforcement litigation are: 1) reliable water supply for downstream decreed right holders (particularly the tribes); 2) improved water quality below the irrigation districts; 3) the impact of groundwater pumpage on the availability of surface water; and 4) storage in San Carlos Reservoir. Discussions on these issues for settlement are included in the Gila River Indian Community negotiations.

LITTLE COLORADO RIVER BASIN

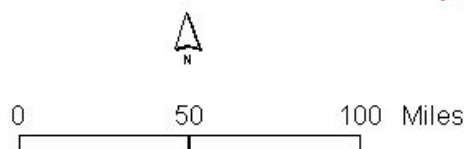
The Navajo Nation, Hopi Tribe, Zuni Pueblo and the San Juan Southern Paiute Tribe have been negotiating with non-Indian water users in the Little Colorado River basin, the State of Arizona and the federal government for several years in a settlement committee appointed by the Little Colorado General Stream Adjudication Court. The Arizona Department of Water Resources prepared a technical report for the parties and meetings have been held on a periodic basis.

The court has issued a stay of the proceedings in 1994 during which time the parties are directed to bring settlement discussions to a conclusion. If a settlement cannot be reached the court is expected rule on how the litigation should proceed.



There are 21 existing Indian reservations in Arizona, and their lands comprise approximately 28% of land ownership.

- ★ State Capitol
- County Seats
- Major Streams
- International Boundary
- Central Arizona Project (CAP) Canal
- Interstate Highways
- Arizona Boundary
- Counties
- Land Subject to Inundation
- Lakes and Reservoirs
- Indian Reservations



ARIZONA INDIAN RESERVATIONS



© 2000 State of Arizona,
Department of Water Resources

For more information about this map, contact:
Arizona Department of Water Resources
Geographic Information Services
300 North Third Street
Phoenix, AZ 85004
Phone: (602) 417-2404
Fax: (602) 417-2401
E-Mail: adwrinfo@adwr.state.az.us

March 27, 2000

FEDERAL RESERVED WATER RIGHTS

Federal reserved water rights are based upon a reservation of water by the United States government, typically stemming from case law, presidential executive order, or an act of Congress. For example, Indian reserved rights are generally based upon the 1908 United States Supreme Court decision in *Winters v. United States of America*, 207 U.S. 564 (1908), establishing the "Winters Doctrine." Finally, some non-Indian federally reserved rights are invoked by Congressional Act, such as the Wilderness Act or other federal reservation creation acts. Federal reserved claims differ from state law based claims in that beneficial use of water and the perfecting of a water right are not required (in all cases). For example, federal rights are set aside, or reserved, for use on the reservations (non-Indian or Indian) regardless of whether the water is put to beneficial use. The only stipulations are that the water be utilized for the defined purpose of the reservation and that it claims a priority date based upon the creation of the reservation. Federal water law is predominantly based on case law handed down over the years in numerous federal court decisions. Some of the leading cases decided by the United States Supreme Court are:

HENRY WINTERS, ET AL. V. UNITED STATES OF AMERICA, 207 U.S. 564 (1908)

The Court established in 1908 what is now known as the "Winters Doctrine." It found that an Indian reservation (in this case, the Fort Belknap Indian Reservation) may reserve water (of the Milk River in Montana) for future use in an amount necessary to fulfill their purpose with a priority dating from the treaty, act of congress, or executive order that established the reservation (May 1, 1888 in this case).

CAPPAERT V. UNITED STATES OF AMERICA, 426 U.S. 128 (1976)

This interesting case, decided by the Court in 1976, involved the issue of groundwater pumping and its impact on the surface water resources at a nearby federal national monument (Devil's Hole National Monument, Nevada). The junior groundwater pumpers (Cappaert) were restricted to ensure desert pup-fish (a threatened and endangered species) survival. The Court, however, ruled that the federal reserved right quantification was limited to the primary purpose of the reservation and only to the minimum amount of water necessary to fulfill the purpose of the reservation. Put simply, the National Park Service was allowed to retain exclusive rights to enough water (in the pool) in order to maintain the minimum amount necessary to ensure the survival of the fish. Any amount of water over and above this minimum was available for pumping by the Cappaerts.

UNITED STATES OF AMERICA V. NEW MEXICO, 438 U.S. 696 (1978)

In 1978, the Court found that the reserved water rights on national forests apply only to the preservation of timber resources and water flows. All other claimed needs were to be considered secondary purposes and the federal government would have to obtain rights like any other appropriator under state law. The Court also cautioned that quantification of these reserved rights should involve consideration of the potential impacts on downstream junior state law-based water rights appropriators.

ARIZONA V. CALIFORNIA, 373 U.S. 546 (1963), SUPP., 439 U.S. 419 (1979), SUPP., 460 U.S. 605 (1963)

This landmark decision, initially entered in 1963, with a subsequent decree issued in 1964, confirmed the division of waters of the Colorado River among the Lower Basin States (Arizona, California, and Nevada). The Court quantified the reserved rights of five Indian reservations (along the Colorado River) on the basis of the amount of water necessary to irrigate all practicably irrigable acres (PIA) on the reservations. This is known as the PIA method of quantifying reserved rights. The Supreme Court also placed stipulations and requirements on the State of New Mexico regarding uses of water from the Gila River (and tributaries) and confirmed that the contribution of the flow of the Gila River was excluded from Arizona's 2.8 million acre-feet annual Colorado River entitlement.

In addition to Indian reservations, Court decisions have extended the reserved right doctrine to encompass water uses in national forests, national parks and monuments, military reservations, and lands formally reserved and administered by the Bureau of Land Management.